

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date: 12-14-72 by def.

D. C. Form No. 106A Rev.

TITLE OF CASE	ATTORNEYS
<p>ELLIS MANUFACTURING CO., INC., a corporation,</p> <p style="text-align: center;">vs.</p> <p>AZTEC DEVELOPMENT CO., a corporation,</p>	<p>For plaintiff: Malloy and Malloy Thurston Natl. Bldg., Tulsa</p> <p>John S. Athens Bob F. McCoy 583-0301 74103 Conner, Winters, Ballaine, Barry & McGowen 711 First National Building Tulsa, Oklahoma 74103</p> <p>L. Wayne Kreis Chambers & Kreis - 4/20/75 per order 5037 West Rosedale Fort Worth, Texas 76107 - 8/1/75</p> <p>For defendant: Wileoxen, Gephart, Lunn & Mayes 505 W. Okmulgee P. O. Box 1842 Muskogee, Oklahoma 74401</p>

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed 9-1-72	Clerk	8/11	J. Athens	15.00	
		8/17	C/D 8		15 00
J.S. 6 mailed 7-1-75	Marshal				
Basis of Action: money judgment for breach of contract	Docket fee				
	Witness fees				
Action arose at:	Depositions				

DATE	PROCEEDINGS	Date Order or Judgment Noted
8-11-72	Complaint, filed. Summons issued. rm	
8-24-72	Marshal's return of service of summons, filed. Served Aztec by serving Angie Bliss in Tahlequah on 8/15/72 (USM \$11.92) rm	
8-31-72	Defendants Motion to dismiss, filed. ds	
8-31-72	Defendant's brief in support of motion to dismiss, filed. ds	
8-31-72	Ordered by the court that plaintiff respond to defendant's motion to dismiss with a reply brief within ten days of this date. (AEB-J)	ds
9-11-72	Plaintiff's reply to brief in support of defendant's motion to dismiss, filed. ds	
9-14-72	Defendant's reply brief in support of motion to dismiss, filed. ds	Copy to Magistrate
10-24-72	Notice of taking oral deposition of def. by pltf., filed. rm	
10-31-72	Deft. motion for stay of discovery or in alternative limiting discovery, filed. g	
10-31-72	Brief in support of motion for stay of discovery or in alternative limiting discovery, filed. g	
10-31-72	Order by the Court that pltf. respond to def't's motion within 10 days. (AEB-J)g	
11-10-72	Plaintiff's reply to brief in support of defendant's motion for stay of discovery or in the alternative limiting discovery filed. ds	
11-15-72	Ordered that Magistrate conduct hearing on def't's motion to dismiss and motion for stay of discovery or in the alternative limiting discovery. (AEB-J)hm	
11-15-72	Hearing held on above motions. It is recommended that def't's motion to dismiss and def't's motion for stay of discovery or in the alternative limiting discovery each be denied & depositions to be taken on or before 11-27-72. Deft. given 10 days to plead or answer & pltf. to prepare F&R within 5 days. (MLB-Mag)hm	
11-21-72	Findings and recommendations of Magistrate, filed. (MLB-Mag)hm (copies mailed)	
12-4-72	Order approving recommendation of Magistrate, filed; defendant's motion to dismiss overruled without prejudice to right to move for removal of cause; def't's motion for stay overruled and pltf. authorized to proceed with discovery; def't. allowed 10 days from date to file answer to complaint; and pltf. allowed to take depositions of def't. on or before 11-27-72. (AEB-J)g copies mailed.	
12-8-72	Deft's request for inspection, filed.	
12-14-72	Answer of def., counter-claim, and demand for jury trial, filed. rm	
1-4-73	Pltf's motion to strike and reply to counterclaim, filed. hm	
1-4-73	Brief in support of motion to strike, filed. hm	
1-4-73	Ordered that def't. file responsive brief within 10 days to pltf's motion to strike.(AEB-J)hm	

DATE	PROCEEDINGS	Date Order or Judgment Noted
12-13-73	Appl. of pltf for Extension of Time to File Response to Deft's Motion to Dismiss, filed.a o b j	
12-20-73	Order granting pltf. to 12-26-73 to respond to mot. to dismiss, filed. (AEB-J)g c g m l d	
1-28-74	Deft's Motion to Strike Case from Pre-Trial Docket filed. e	
2-7-74	Appl. of Pltf. for ext. of time to file response to Deft.'s Mot. to Dismiss, filed. v -o to be in. o in 1 pmt to J on 2-8. <i>Left. called & advised to send Order - order to Judge on 1-29-74 u.</i>	
2-11-74	Order, filed, striking this case from current pre-trial docket. (AEB-J)v <i>- copies mld.</i>	
2-11-74	Order, filed, granting Pltf. 10 days from this date to respond to Deft's Mot. to Dismiss, or until 2-21-74. (AEB-J)v <i>- cps. mld.</i>	
3-5-74	Application for Extension of Time to File Response to Defendant's Motion to Dismiss, filed.s	
3-11-74	Order, filed that plaintiff shall have 10 days from this date to respond to defendant's Motion to Dismiss.s <i>copies mld.</i>	
3-21-74	Pltf's Sworn Statement of Facts in Response to Deft's Mo. for Default Judgment, filed. e	
3-21-74	Brief in Support of Response to Deft's Mo for Default Judgmt, filed. e	
3-21-74	Supplementary statement in Support of Pltf's Sworn Statement of Facts in Reponse to Deft's Mo. for Default Judgment, filed e	
12-20-74	Order, filed, that motion to dismiss and motion for default judgment shall be continued until further order of this Court; that pltf. shall produce such documents within 10 days or file with the Court specific reasons by such order cannot be followed within prescribed time. (AEB-J)g <i>copies mld.</i>	
12-30-74	Appl. for time of 10 days for pltf. to comply with Order of 12-20-74, filed.k	
12-30-74	Order, filed, granting pltf. 10 days to comply w/ Order of 12-20-74 w/ respect to production of certain documents. (AEB-J)k cps mld	
1-8-75	Appl. of pltf. for time of 10 days from 1-9-75 to comply w/ Order of Court of 12-20-74 w/ respect to production of documents, filed.k o b j	
1-10-75	Order, filed, granting pltf. 10 days from 1-9-75 to comply w/ Order of Court of 12-20-74. (AEB-J)k cps mld	
1-13-75	Deft's obj. to appl. for extention of time, filed.k	
1-21-75	Deft's renewal of motion to dismiss and motion for default judgment on counterclaim, filed. hm	
1-21-75	Pltf's report of the production of documents in accordance with the Court's order of 12-20-74, filed. hm	

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DATE	PROCEEDINGS	Date Order or Judgment Noted
1-22-75	Pltf's RESPONSE to Deft's Renewal of Motion to Dismiss and Motion for Default Judgment on the Counterclaim, filed. lm	
2-25-75	Order, filed, that the Renewal of Motion to Dismiss and Motion for Default Judgment on Counterclaim filed by the Deft. are hereby overruled. (AEB-J)k cps mld	
2-26-75	Motion of deft. Aztec Development Co. to compel filing of deposition & payment of costs, filed. g	
2-27-75	Order, filed, that the mot. to compel filing deposition & payment of costs incidental thereto is overruled; that deft. pay the costs of transcription of the original deposition & file w/ the Clerk of the Court w/in 30 days from this date; that each party pay the costs of obtaining a copy of the deposition if they desire & require such copy. (AEB-J)k cps mld	
3-13-75	MO: It is ordered by the Court that parties hold a pretrial conf. on or before 4-24-75 and file a PT order on or before 5-1-75. (AEB-J)k cps by cert ml	
3-21-75	Case set for jury trial on 6-2-75, at 10:00 AM (AEB-J) b nts mld.	
3-25-75	Dep. of Wm. G. Ellis taken on 10-29-73 before James W. Garrett (CSR) on behalf of deft., in Stilwell, Okla. (\$202.00)lm	
5-1-75	Pltf;s reply to Deft's answer, filed. b	
5-1-75	MO: It is ordered by the Court that parties are allowed one week from this date to file agreed pre-trial order.(AEB-J)b	
5-5-75	MO: Ordered by the Court that case is stricken from jury trial docket of 6-2-75, and re-set for jury trial on 6-9-75, at 10:00 A.M., in Miami, Okla.(AEB-J)b nts mld	
5-5-75	Order, filed; ext. time to 5-9-75 to file approved pretrial order, if pretrial order cannot be agreed upon, each counsel to file proposed pretrial order on or before 5-9-75. (AEB-J)g	
5-8-75	Motion of defendant to dismiss, filed. g	
5-8-75	Brief in support of mot. to dismiss, filed. g	
5-8-75	MO: Pltf. granted 10 days to respond to mot. to dismiss. (AEB-J)g	
5-14-75	Pltf.'s response to Deft.'s mot. to dismiss, filed. v	
5-14-75	Brief in support, filed. v	
5-14-75	Pltf.'s Proposed Pretrial Order, filed. v	
5-14-75	Deft.'s Proposed Pretrial Order, filed. v	
5-29-75	Order overruling the Deft's motion to dismiss, filed.(AEB-J)b cps mld.	
5-30-75	Defendant's trial brief, filed. g	
5-30-75	Defendant's requested instructions, filed. g	
6-3-75	Deft's affd. re exhibits, filed. g	
6-3-75	Deft's application for order of sanctions, filed. g	

DATE	PROCEEDINGS	Date Order or Judgment Noted
1-15-73	Reply brief to brief in support of mo. to strike, filed by def. rm	
1-26-73	Defendant's request for production of documents, filed. ds	
2-8-73	Motion of the Deft., Aztec Development Co., to Change Venue for Convenience, with Brief in Support as part of the pleading, filed. v	
2-8-73	Ordered by the Court that the Pltf. is granted 10 days from this date to respond to Deft.'s Motion to Change Venue for Convenience. (AEB-J)v	
2-20-73	Pltf's. Response to Deft's. Mtn. to Change Venue for Convenience., filed. jj	
2-23-73	Pltf.'s Brief in support of Pltf.'s Response to Deft.'s Motion to Change Venue for Convenience, filed. v	
3-15-73	Pltf's Response to Deft's Request for Prod. of Documents, filed. jj	
4-6-73	Order ^{filed} that the motion to strike filed by plaintiff on 1-4-73 is hereby overruled. -copies mailed- (AEB-J)h	
4-6-73	Order filed that def's motion to change venue filed 1-4-73 is overruled without prejudice, may be refiled at later time. -copies mailed- (AEB-J)h	
5-2-73	Parties directed to hold pre-trial prior to 6-1-73 and file pre-trial order not later than 6-8-73. (AEB-J)h	
5-15-73	Defendant's motion for order for production of documents, filed. ds	
5-15-73	Ordered by the Court that plaintiff respond to defendant's motion for order for production of documents within ten days of this date. (AEB-J) ds	
5-17-73	It is ordered that Def's motion for order for production of documents is transferred to U.S. Mag. Bradford for hearing and recommendation. (AEB-J)h	
5-24-73	Notice of attorneys' lien, filed. ds	
5-24-73	Plaintiff's brief in response to defendant's motion for order for production of documents, filed. ds	
5-30-73	Joint Application for extension of time to file pretrial order, filed. jj	
6-4-73	Defendant's answer brief on motion for order for production of documents, filed. ds/	
7-20-73	Appearance of L. Wayne Kreis, attorney, for plaintiff, filed. ds	
7-20-73	Notice of appearance of attorney L. Wayne Kreis, for plaintiff, filed. ds	
8-14-73	Ordered by the Court that upon joint application of parties, case is stricken from pre-trial assignment, to be reset on next pre-trial docket. (AEB-J)hm (letter written parties)	
8-22-73	Ordered that Magistrate conduct hearing on deft's motion for order for production of documents. (AEB-J)hm	
8-22-73	Hearing held on above motion. It is recommended that deft's motion for order for production of documents be sustained. Deft. counsel to prepare F&R within 5 days. (MLB-Mag)hm	

DATE	PROCEEDINGS	Date Order or Judgment Noted
8-29-73	Findings and Recommendations of Mag., filed. (MLB-USMag)v -cps mld.	
9-4-73	Amended Findings and Recommendations of Magistrate, filed (MLB-USMag) jj - copies mailed.	
9-20-73	Order filed that def's motion for order to produce documents sustained, subject to limitation certain documents shall be made available for inspection by officers of def. corp.(AEB-J)h -copies mailed-	
10-5-73	Mtn. to Dismiss of Deft. Aztec Development Co, filed. jj	
10-5-73	Brief in Support of Mtn. to Dismiss, filed. jj	
10-5-73	Ordered by the Court that pltf. is granted 10 days from this date in which to respond to deft's Mtn. to Dismiss (AEB-J)jj <i>10-10-73</i>	
10-15-73	Plaintiff's answer to deft's mot. to dismiss, filed. g	
10-15-73	Plaintiff's sworn statement of facts in answer to deft's brief in support of mot. to dismiss, filed. g	
10-18-73	Notice of deposition to Ellis Mfg. Co., filed. g	
10-24-73	Parties directed to hold PT Conference prior to 11-29-73 and file PT order not later than 12-6-73. (AEB-J)v -notices mailed.	
10-31-73	Appl. for Withdrawal of Attorneys for Pltf, Ellis Manufacturing Co., filed.	
11-1-73	Order granting application of John S. Athens and Bob F. McCoy to withdraw as attorneys of record for plaintiff, filed. g <i>11-1-73</i>	
11-8-73	Motion of L. Wayne Kreis to withdraw as counsel for plaintiff, filed. ds	
11-13-73	Order permitting attorneys to withdraw, filed. (AEB-J)v -copies mld.	
11-21-73	Application to be Designated as Attorneys of Record, filed. jj O to J	
11-21-73	Application for Continuance of PT Hearing, filed.jj O to J <i>See Table Con w/ P. Malloy - to examine copies of Appl. to Court.</i>	
11-21-73	Order filed that firm of Malloy and Malloy are designated as attorneys for plaintiff, Ellis Manuf. Co., Inc., copies of order be served on def. Aztec Development Co. (AEB-J)h <i>copies delivered</i>	
11-21-73	Order filed that pre-trial hearing be continued until next pre-trial docket. (AEB-J)h <i>copies delivered</i>	
12-6-73	Ordered by the Court that Pltf is granted 10 days from this date to respond to Deft.'s Mot. to Dismiss filed on Oct. 5, 1973. (AEB-J)v	
12-7-73	Motion of defendant for default judgment on defendant's counter-claim filed. h	
12-7-73	Brief in support of motion for default judgment on its counter-claim filed. h	
12-12-73	MO: Parties directed to hold PT conference prior to 1-21-74, & file PT order not later than 1-30-74. (AEB-J)v -notices mld.	

DATE	PROCEEDINGS	Date Order or Judgment Noted
6-3-75	Brief in support of motion for sanctions, filed. g	
6-5-75	Trial Brief, filed by Plaintiff. v	
6-5-75	Affidavit of Pat Malloy re exhibits, witnesses, etc., to used in trial, filed. v	
6-9-75 s	<p>Case called for jury trial. Parties present. Hearing held on Deft motion for dismissal; motion overruled.</p> <p>Case tried to jury 6-9, 6-10, 6-11 & 6-12. Jury selected & sworn. Rule is invoked. Pltf. makes opening statements & presents case in chief. Witnesses sworn & testify. Pltf rests. Deft's motion for a directed verdict filed in open court. Deft. makes opening statements & presents case. Witnesses sworn & testify. Motion for directed verdict, overruled. Pltf. presents rebuttal evidence w/ testimony of witnesses. Parties rest. Closing arguments made. Court instructs jury & Bailiff sworn. Jury retires to deliberate at 4:45 p.m. on 6-11. Jury excused at 5:35 p.m., to begin deliberations at 9:30 a.m., 6-12. (6-12, 11:45 a.m.) Jury returns with verdicts in favor of Deft. & in favor of Deft. on its counterclaim & assess damages in amt. of \$1.00. Verdicts ordered received read & filed in open court. Jury discharged at 11:48 a.m. (AEB-J)b</p> <p>Deft's motion for a directed verdict, filed. b</p> <p>Verdict, filed, finding in favor of Deft. (AEB-J)b</p> <p>Verdict, filed, finding in favor of Deft. on its counterclaim & assess damages in amt. of \$1.00. (AEB-J)b</p> <p>Trial Exhibits, filed. (in exhibit room) b</p>	
6-9-75		
6-12-75		
6-12-75		
6-12-75		
6-17-75	<p>U.S. Marshals service returned and filed. Served Nathan Glidewell at Tulsa, Okla., Tom Holbird, at Tahlequah, Okla., Bill Barker at Okmulgee, Okla., Brady Harlis at Stilwell, Okla., Preston McPhail at Tahlequah, Okla., Arnold Price at Jay, Okla., and Merritt Wentz at Van Buren, Arkansas. All served on 6-6-75. <u>UNABLE</u> to serve Dale Catron. (USM \$84.56)jj</p>	
6-18-75	Bill of costs in sum of \$1724.06, filed. g	
6-18-75	Notice of taxation of costs, filed. g	
6-12-75	<p>Judgment, filed & entered in favor of Deft. & against Pltf., and Further Ordered that Judgment is entered in favor of Deft. & against Pltf. on Deft's counterclaim in amt. of \$1.00. (JCS-Clk)b</p> <p>taxed</p>	
6-19-75	Bill of Costs in the sum of \$302.00. (JCS-Clk)mm	
6-23-75	Motion of defendant to review taxation of costs, filed. g	
6-23-75	Brief in support of motion to review taxation of costs, filed. g	
6-23-75	MO: Pltf. granted 10 days to respond to pltf's mot. to review taxation of costs. (AEB-J)g	
6-26-75	Plfts' Response to Defendants' Motion to Review Taxation of Costs, filed. mm	
6-26-75	Brief in Support of Plfts' Responses to Defendants' Motion to Review Taxation of costs, filed. mm	

DATE	PROCEEDINGS	Date Order or Judgment Noted
7-10-75	Notice of appeal by pltf. from judg. of 6/12/75, filed. rm (copies to USCA)	
7-10-75	Bond for costs on appeal (\$250 surety), filed. rm	
8-19-75	Order Extending Time to Docket Appeal, filed. lm (AEB-J) cps mld.	
9-15-75	Reporter's transcript of proceedings had on 6/9, 10, 11 and 12, 1975, jury trial - Volume I, filed. (L.Marks-CR)rm	
9-15-75	Reporter's transcript of proceedings had on 6/9, 10, 11 and 12, 1975, jury trial - Volume II, filed. (L. Marks-CR)rm	
9-15-75	Appeal record (4 vols.) transmitted to USCA.rm	
9-29-75	Motion of pltf. to suppl. record on appeal, filed.rm/	
10-9-75	Order, filed, overruling plaintiff's motion to supplement record. (AEB-J)g cpy to counsel & USCA	
10-10-75	Alias Motion to Supplement the Record of the plaintiff, Ellis Manufacturing Co., Inc., filed. mm (O to J)	
10-15-75	Order, filed, granting pltf's alias motion to supplement record. (AEB-J)g	
10-15-75	Supplemental appeal record sent to USCA. g	
6-11-76	Mandate and opinion of USCA, filed and spread of record, affirming judgment of 6/12/75. rm	
7-6	Original appeal record (4 vols. and 1 suppl. vol.) recd. from USCA.rm	
7-12	Order, filed, overruling pltf's mot. to review taxation of costs. (AEB-J)g cp. mld.	